What is a reasonable amount? As has been said by my Lord Chief Justice, the seller has had the use of $377,500 for seven years which, if invested at 6% per annum, would have brought him $158,550 and this is sufficient compensation for him. For the reasons given by my Lord Chief Justice, I agree that justice will be served by ordering the seller to refund this money to the buyer without interest except as from the date of this judgment he should pay interest at 6% per annum. The buyer will have the costs throughout.

I have not said anything as to the effect of section 65 of the Contracts (Malay States) Ordinance and I have not done so, because in the lower court the buyer relied on it only half-heartedly and before us he concedes that it does not apply at all.

Ali F.J. concurred.

Appeal allowed.

Solicitors: *Maxwell Kenion, Cowdy & Jones; Shearn Delamore & Co.*

IN RE G.G. PONNAMBALAM

[O.C.J. (Ong Hock Thye C.J. (Malaya)) July 26, 1969]

[Kuala Lumpur—Petition for Admission No. 40 of 1969]

Advocates and Solicitors — Admission — Special grounds — Shortening of period of posting of notice — Dispensation of reading in chambers — What are special grounds — Discretion of court — Public interest — Advocates and Solicitors Ordinance, 1947, ss. 5, 6, 7 and 8.

In this case the petitioner, a Queen's Counsel, had applied for admission as an advocate and solicitor of the High Court in Malaya and asked that the court's discretion be exercised to shorten the statutory period of posting of the notice under section 5(2) of the Advocates and Solicitors Ordinance, 1947 as well as to dispense with reading in chambers as required by section 5(3). The question for decision was whether this was a proper case for the exercise of the court's discretion in accordance with the provisions of section 5(5) of the Ordinance.

Held: (1) pre-eminence in the profession is not *per se* a special ground nor does reasonableness of the application constitute a special ground but the court must be satisfied that there are special grounds for the exercise of its discretion and that it is in the public interest or otherwise that the normal procedure for admission should not be followed;

(2) in this case no special grounds had been shown and therefore no order will be made.

Cases referred to:—

(1) *Re Goff Q.C.* [1962] M.L.J. 241.

(2) *In re Shawcross* [1956] M.L.J. 104, 108.

(3) *Re D.N. Pritt Q.C.* [1954] M.L.J. xxiii.

(4) *Re Dingle Foot* [1964] M.L.J. 379, 380.

(5) *Re Ironside* [1958] M.L.J. 152, 153.

(6) *In re Atkinson* [1947] M.L.J. 160, 161.

(7) *R.* v. *Bedfordshire* 24 L.J. Q.B. 84.

PETITION FOR ADMISSION.

J.B. Jeyaretnam (*M. Abraham* with him) for the petitioner.

Ajaib Singh (Senior Federal Counsel) on behalf of the Attorney-General, Malaysia.

Dr. R. Ramani (*Khoo Eng Chin* and *M.S. Naidu* with him) on behalf of the Bar Committee, Selangor.

K.A. Menon on behalf of the Bar Council, States of Malaya.

Ong Hock Thye C.J.: This is a petition for admission as an advocate and solicitor of the High Court in Malaya, which necessarily involves shortening of the statutory period of posting of the notice under sub-section (2) of section 5 of the Advocates and Solicitors Ordinance 1947, as well as dispensation of reading in chambers as required by sub-section (3) of the same section. These two prayers would have to be allowed before the petition for admission can be entertained. The petitioner asks that the discretion of the court be exercised accordingly, under the provisions of sub-section (5), of which the relevant portion reads as follows:—

> "(5) The court may, on application and on special grounds, one of which may be that the petitioner has been engaged in any part of Her Majesty's dominions in the active practice of his profession after having qualified as a Barrister of England ....., to be stated on affidavit or statutory declaration ..... by order shorten the period during which the notice referred to in sub-section (2) of this section is required to be posted and may by order shorten or dispense with the period during which the petitioner is required to attend and receive instruction in law in an office or to read in chambers, and may, if it thinks fit, admit and enrol the petitioner at any time."

The petitioner is Mr. G.G. Ponnambalam, Q.C., who was called to the English Bar on January 26, 1927 and admitted and enrolled an advocate of the Supreme Court of Ceylon on May 6, 1927. He has since been engaged in the active practice of his profession there. In 1948 he was appointed one of His Britannic Majesty's Counsel in Ceylon. He is the leader of the Bar on the criminal side and had been engaged in several *causes célèbres* in that country.

At the close of a preliminary enquiry held in March and April 1969, Dr. Saw Hock Chuan and his brother Mr. Saw Hock Beng, prominent residents of Kuala Lumpur, have been committed to stand trial with certain others in the High Court at Kuala Lumpur, on charges of criminal breach of trust, punishable under section 409 of the Penal Code. Against Dr. Saw alone there is an additional charge of abetment of

an offence punishable under the Prevention of Corruption Act 1961. The two accused are anxious to retain Mr. Ponnambalam as leading counsel at the trial and he has agreed to appear, subject to his being admitted to practice in the courts of this country. His petition was affirmed at Colombo on May 17, and filed on June 9, 1969 in the Registry at Kuala Lumpur. The last day of posting of the notice required by sub-section (2) of section 5 of the Ordinance was June 16, 1969. Ordinarily it should remain posted till December 16, 1969 for the statutorily prescribed period of 6 months. As the trial in question is fixed to commence on August 11, 1969, this application has become necessary.

It is opposed by the Selangor Bar Committee, the Bar Council and the Attorney-General.

A preliminary objection raised by Mr. Menon, representing the Bar Council, was based on non-compliance with the provisions of sections 6, 7 and 8 of the Ordinance. The objection, however, found no support from Dr. Ramani, counsel for the Bar Committee. Taking the view I do of the nature of the application, I am not seeking a facile solution in sections 7 and 8, as was done in *Re Goff Q.C.*[1]

The real question that has to be resolved is whether or not this is a proper case for exercise of the court's discretion in accordance with the provisions of sub-section (5) of section 5. In other words, what "special grounds" have been made out shewing cause for exceptional treatment of this application? No one disputes the proposition that judical discretion ought to remain unfettered and exercisable according to the merits of each particular case. In my view, therefore, all such cases which have come before the courts, whether in Malaya or Singapore, should be read in this light. *Dicta* expressed at various times, having regard to the special circumstances of each case, ought not to be construed as establishing principles which, by a process of accretion, affect the exercise of judicial discretion as barnacles on a ship's bottom. I would therefore voice respectful agreement with Whyatt C.J. (Singapore) whose views on sub-section (5) of the Singapore Ordinance (in *pari materia* with our law) were expressed in *In re Shawcross*[2] as follows:—

> "In my opinion, the words 'special grounds' are wide and flexible words and to limit their meaning in the manner suggested by the Bar Committee would be to impose upon the courts greater fetters than the legislature has imposed on them. No court can or should attempt to lay down an exhaustive definition of these words. Each case must depend upon its own particular facts and it is for the court to say whether the facts are so special and exceptional as to justify dispensing with the normal procedure of six months notice and six months instruction in law prescribed by sub-sections (2) and (3) of section 5."

It thus seems to me a salutory rule to observe, that one may safely say what are not special grounds, rather than state affirmatively what constitutes a special ground. The legislature advisedly left the question open. I do not think the courts should step in where the legislature fears to tread.

I shall content myself, therefore, by stating my opinion that pre-eminence in the profession is not *per se* a special ground. This, I think, is the generally accepted view of all the judges. In *Re D.N. Pritt Q.C.*,[3] where Murray-Aynsley C.J. (Singapore) said, "I think that his special experience in cases of this kind is a special ground," *expressio unius est exclusio alterius.* Another case, similarly, is *In re Shawcross,*[2] in which Whyatt C.J. said:—

> "That being the construction I place on the expression, 'special grounds', the only remaining question is whether the grounds advanced by Sir Hartley Shawcross and Mr. Cross bring them within its terms. I have already dealt with their affidavits in some detail and it is unnecessary to refer to them again. It is sufficient to say that the facts disclosed in the affidavits are special and exceptional; the Bar Committee in their letter of the 25th November to the Attorney-General refer to the circumstances as 'very special'. In fact the difficulty is rather to find any thing in this case which is not special and exceptional, and I have no doubt that the combination of facts set out in the affidavits is such as to justify dispensing with the normal procedure and constitutes special grounds within the meaning of sub-section (5) of section 5."

In *Re Dingle Foot,*[4] the conditions imposed by section 7(1)(a) and section 8 had both been satisfied and it only remained to consider whether the statutory six months' notice might properly be shortened by 79 days. Nevertheless, there had to be special grounds, which were put forward and not challenged. Accordingly I held that there were "somewhat exceptional circumstances for the plaintiffs being allowed counsel of their choice". Sir Dingle Foot was admitted and enrolled as an advocate and solicitor of the High Court in Malaya in those special circumstances. I think it is only right to say that no invidious distinctions are or should be drawn between his case and that of Mr. Ponnambalam.

In the second place, reasonableness of the application does not, in my opinion, constitute a special ground. On this point I respectfully express my concurrence with the view of Whyatt C.J. in *Re Ironside,*[5] which I quote:—

> "But the Ordinance does not give the court power to reduce the period because it considers it reasonable to do so in the circumstances of a particular case. On the contrary, the question posed by sub-section (5) of section 5 is not whether it is reasonable to reduce the statutory period of six months but whether there are special grounds for doing so."

In the third place, much time and labour appears to have been expended on the question of "public interest" ever since the point was incidentally raised by Jobling J. in *In re Atkinson*[6] as follows:—

"The policy of section 5(3) is clearly that practitioners shall, before admission acquire some knowledge and experience of local laws and practice as will ordinarily be obtained by attending at the office of a local practising advocate and solicitor of not less than 7 years standing for the prescribed period which in the case of this petitioner is 6 months. It follows that any special grounds advanced in support of an application under section 5(5) to shorten the prescribed period must satisfy the court either, that it is in the public interest or otherwise desirable that this policy should not be strictly adhered to in a particular case, or that the petitioner has acquired the requisite knowledge and experience in a manner or period other than that provided."

Reference to this case was made by Whyatt C.J. in *In re Shawcross,*[2] approving the above passage. The learned Chief Justice went on thus:—

"It is clear, therefore, that special grounds are not limited to those cases where the petitioner shows that he has acquired an adequate knowledge and experience of local laws and practice by means other than those laid down in sub-section (3) of section 5; the petitioner may show, in the alternative, that it is in the public interest or otherwise desirable that the normal procedure prescribed by sub-section (3) of section 5 should not be followed."

"Public interest" thus appears to have been grafted on to the meaning of special grounds by a process of interpretation. I am afraid this has introduced added difficulty into the construction of sub-section (5), even though public interest may not be as unruly a horse as "public policy." But what is public interest and whose that should be considered? Thomson C.J. (Malaya, as he then was) asked this question and stayed only long enough for a partial answer in *Re Goff.*[1] Clearly a matter of public interest is not just something sensational, or what is interesting as gratifying curiosity, "but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected": *per* Campbell C.J. in *R. v. Bedfordshire.*[7]

Passing from the general to the particular, I think Whyatt C.J's remarks about what is "in the public interest or otherwise desirable" should be read with their exegesis in his judgment[2] page 108:—

"I should perhaps add that ..... counsel for the Bar Committee conceded that if a case arose which required a highly specialised knowledge of the law for which no suitable advocate was available in the Colony and in consequence, there might be a failure of justice if an outside counsel were not admitted *ad hoc*, such a combination of circumstances would constitute special grounds within the meaning of sub-section (5) of section 5. I agree with this view, and indeed any other view would mean that the legislature intended that a restrictive meaning should be given to these words even though that might in certain circumstances result in a failure of justice, which would be contrary to the accepted canon of construction that the legislature is presumed not to intend an injustice."

I have quoted the above because it expresses my own views and, in respect of the instant case, goes to the heart of the matter. In the synopsis of the petitioner's brilliant career, as set out in the affidavit of Mr. Ganesan, I find myself in agreement with Dr. Ramani, that what is of main relevance centres on paragraph 22, to the effect that the Penal Code of Ceylon and the procedure relating to criminal trials in Ceylon derive, like the Penal and Criminal Procedure Codes of this country, from those of India. I do not agree with Mr. Ganesan that, because the charges against the accused persons have aroused considerable public interest by reason of public moneys having been used, and because questions had been asked in Parliament, resulting in extensive publicity, the matter becomes one of public interest, in the proper sense, which can only be served by admitting the petitioner to lead the defence at the risk of a failure of justice. Mr. Ganesan's affidavit does not suggest that, among the large body of advocates and solicitors practising in the High Courts in Malaya, as many as may be desired cannot be found who are fully experienced and capable of ensuring in every respect a fair trial in the highest traditions of the Judiciary of this country. Section 14(2) of the Courts of Judicature Act 1964 provides that every person who is admitted as an advocate and solicitor in the States of Malaysia shall be enitled to practise in the High Court. Article 5(3) of the Constitution gives accused persons the right to be defended by a legal practitioner of his choice. But until he is admitted, no qualified person is a legal practitioner whether under article 5 or section 14 of the Judicature Act. I do not think article 5 can be read as declaring a right regardless of section 14.

With all respect to Mr. Ponnambalam I regret to say that I find no special grounds put forward for the exercise of my discretion. I would make no order.

No order made.